

Decision 03-01-069 January 30, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of IP Networks, Inc. for Extension of
Authority From a Limited, to Full, Facilities
Based Competitive Local Carrier and an
Interexchange Carrier.

U-6362-C

Application 01-03-006
(Filed March 6, 2001)

Application of Pacific Gas and Electric Company
for Commission Approval of Two Irrevocable
License Agreements to Permit Use of Utility
Support Structures, Optical Fiber and Equipment
Sites to IP Networks, Inc.

(U 39 E)

Application 01-12-033
(Filed December 21, 2001)

O P I N I O N

I. Summary

In Application (A.) 01-03-006, IP Networks, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide full facilities-based local exchange and interexchange telecommunications services. Specifically, Applicant requests authority to construct fiber optic cable facilities and ancillary equipment between structures to which service will be provided. By this decision, we grant the requested authority subject to the terms and conditions set forth below, and close the proceeding.

In A.01-12-033, Pacific Gas and Electric Company requested approval of licenses and right to use agreements with Applicant. The agreements were approved in Decision (D.) 02-07-026, except to the extent they involve construction projects reviewed in A.01-03-006. In this decision, we approve the agreements to the extent they involve construction projects reviewed herein, and close A.01-12-033.

II. Background

Applicant, a California corporation, seeks authority to provide full facilities-based local exchange and interexchange services. Applicant's principal place of business is located at 30 Corporate Park, Suite 300, Irvine, California 92606. By D.00-07-009, Applicant was granted limited facilities-based authority to provide local exchange and interexchange services. By this application, it requests facilities-based authority to construct specified facilities. Therefore, the only issue before us in this application is whether its proposed construction, in consideration of the requirements of the California Environmental Quality Act (CEQA), should be approved.

III. CEQA

CEQA requires the Commission as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

Rule 17.1 of the Commission's Rules of Practice and Procedure requires the proponent of any project subject to Commission approval to submit with the application for approval of such project a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project that may be of concern, and to prepare the Commission's Initial

Study to determine whether the project needs a Negative Declaration or an Environmental Impact Report. We have reviewed the proposed project for compliance with CEQA.

Applicant proposes to offer Last Mile telecommunications services in urban areas within the San Francisco Bay Area, and the Sacramento Metropolitan Area. Applicant proposes to construct fiber optic cable facilities and ancillary equipment between structures to which service will be provided. The term “Last Mile” refers to the distance between the source facility and the new customer. Installation methods include: use of existing dark fiber unbundled network elements; use of existing conduits, ducts, and rights-of-way of existing utilities and other companies for installation of new fiber optic cable; use of pole attachment rights for installation of fiber optic cable on existing utility structures; construction of new underground conduit in existing public and utility rights-of-way; and construction of new central offices.

It is not possible to identify all potential customers and, therefore, the proposed project has no preplanned routes. To address this type of project, the Commission developed the Last Mile initial study/mitigated negative declaration (MND) as a process-oriented approach that sets forth performance standards for analyzing potential impacts, and for identifying and implementing required mitigation measures. Because the specific locations are not known, the MND takes the conservative approach of presenting all possible impacts and the required mitigation measures. This process provides CEQA compliance for the Commission and responsible agencies, but does not limit the authority of responsible agencies to issue permits and approvals for future specific project routes.

The Commission staff prepared a public notice that announced the preparation of the draft MND, the locations where it was available for review, and the deadline for written comments. The public notice was advertised in newspapers throughout the state. The draft MND was submitted to the State Clearinghouse, main local libraries, and city and county planning departments in project counties, as well as other appropriate state, county and city agencies for review and comment.

Public comments on the draft MND were reviewed and answered, as necessary. The Commission staff then finalized the MND in July 2002 (final MND). The final MND includes a list of mitigation measures with which Applicant must comply as a condition of its CPCN authority. It also includes a Mitigation Monitoring Compliance and Reporting Plan to ensure that the mitigation measures are followed and implemented as intended. The introduction to the final MND is attached to this decision as Attachment A. The final MND shall be attached to the formal file copy of this decision and is incorporated herein by reference. The actual MND language from the final MND, including the required mitigations, is attached to this decision as Attachment B. We hereby approve the final MND.

IV. Conclusion A.01-03-006

We conclude that the application conforms to our rules for authority to provide facilities-based local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

V. A.01-12-033

By D.02-07-026 in A.01-12-033, the Commission granted in part the application of PG&E for Commission authorization under Pub. Util. Code § 851

to enter into two master license and irrevocable right to use agreements (together, the agreements) to permit use of utility support structures, optical fiber, and equipment sites by Applicant. These agreements will enable PG&E to obtain new fiber optics capacity for energy utility communication and control purposes in a cost-effective manner, and Applicant to obtain additional fiber optic capacity to expand its broadband telecommunications network.

D.02-07-026 authorized Applicant to undertake only those activities on PG&E property that are authorized by its limited facilities-based authority. The Commission did not authorize Applicant to perform the balance of the construction activities contemplated in the agreements until it has obtained facilities-based authority in A.01-03-006.

The MND adopted herein addresses the construction proposed in A.01-12-033, to the extent that it is not already authorized by Applicant's existing limited facilities-based authority, and D.02-07-026. Therefore, we will approve the agreements, which are the subject of A.01-12-033, subject to Applicant's compliance with the MND adopted herein. As a result, we will close A.01-12-033.

VIII. Categorization and Need for Hearings

In Resolution ALJ 176-3059 dated March 15, 2001, the Commission preliminarily categorized A.01-03-006 as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

IX. Comments on Draft Decision

No protests were filed in A.01-03-006. In A.01-12-033, the Commission's Office of Ratepayer Advocates (ORA) filed a protest addressing only the ratemaking aspects of the application that were addressed in D.02-07-026. This decision does not address the ratemaking aspects of A.01-12-033. Therefore, this is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VI. Assignment of Proceeding

Loretta Lynch is the Assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The final MND was prepared in compliance with and pursuant to CEQA.
2. The final MND represents the Commission's independent judgement.
3. The MND addresses the construction proposed in A.01-12-033, to the extent that it is not already authorized by Applicant's existing limited facilities-based authority, and D.02-07-026.
4. Notice of A.01-03-006 and A.01-12-033 appeared in the Daily Calendar on March 8, 2001, and December 31, 2001, respectively.
5. No protests were filed in A.01-03-006.
6. ORA filed a protest in A.01-12-033, addressing only ratemaking issues.
7. This decision does not address the ratemaking aspects of A.01-12-033.
8. Hearings are not required.

Conclusions of Law

1. Public convenience and necessity require Applicant's local exchange and interexchange services to be offered to the public subject to the terms and conditions set forth herein.

2. Applicant must agree to, and is required to, carry out the mitigation measures in the final MND in compliance with CEQA.

3. With the incorporation of the mitigation measures in the final MND, Applicant's proposed project will not have potentially significant adverse environmental impacts.

4. The final MND should be adopted pursuant to CEQA.

5. Applicant's construction projects addressed in the final MND should be approved.

6. The Commission should approve the agreements, which are the subject of A.01-12-033, to the extent that they apply to the construction approved in the final MND.

7. A.01-03-006 and A.01-12-033 should be closed.

8. Because of the public interest in local exchange and interexchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to IP Networks, Inc. (Applicant) to operate as a facilities-based provider of local exchange and interexchange services, subject to the terms and conditions set forth below.

2. Applicant is authorized to construct the facilities addressed in the July 2002 final Mitigated Negative Declaration (final MND), subject to the terms and

conditions set forth below. The introduction to the final MND is included as Attachment A. The MND language from the final MND is included as Attachment B.

3. The entirety of the final MND shall be attached to the formal file copy of this decision and is incorporated hereby by reference. It can be found at the Commission's web site @ www.cpuc.ca.gov.

4. The final MND is adopted pursuant to the California Environmental Quality Act.

5. Applicant shall fully implement the mitigation measures described in the final MND.

6. Applicant shall enter into a cost reimbursement agreement with the Commission for expenses accrued from implementing the mitigation and monitoring plan as described in the final MND. Compliance with this agreement is a condition of approval of the authority granted herein.

7. The Commission's Energy Division shall supervise and oversee the construction of the project insofar as it relates to monitoring and enforcement of the mitigation measures described in the final MND. The Energy Division may designate outside consultants, working under Energy Division direction and control, to perform on-site monitoring tasks. The Commission project manager (Energy Division, Environmental Projects Unit) shall have the authority to issue a Stop Work Order on the entire project, or portions thereof, for the purpose of ensuring compliance with the mitigation measures described in the final MND. Construction may not resume without a Notice to Proceed issued by the Environmental Projects Unit of the Energy Division.

8. The agreements, which are the subject of Application (A.) 01-12-033, are approved to the extent that they apply to the construction approved in the final MND adopted herein.

9. A.01-03-006, and A.01-12-033 are closed.

This order is effective today.

Dated January 30, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

[D0301069 Attachments A and B](#)